NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLIFFORD EPPERSON, SR.,	No. 08-15944
Plaintiff - Appellant,	D.C. No. 3:07-CV-00515-BES-VPC
v.	
HOWARD SKOLNIK; et al.,	MEMORANDUM [*]
Defendants - Appellees.	

Appeal from the United States District Court
for the District of Nevada
Brian E. Sandoval, District Judge, Presiding

Submitted October 13, 2009[**]

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Clifford Epperson, Sr., a former Nevada state prisoner, appeals pro se from

the district court's judgment dismissing under 28 U.S.C. § 1915A his 42 U.S.C.

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[*]   This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

[**]   The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

JS/Research

§ 1983 action alleging violations of his constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Epperson's access to courts claim because Epperson failed to allege an actual injury. *See Lewis v. Casey*, 518 U.S. 343, 351-53 (1996) (explaining that there is no "abstract, freestanding right to a law library or legal assistance," and that, to establish an actual injury, a prisoner must demonstrate that his efforts to pursue a nonfrivolous legal claim were hindered).

The district court did not abuse its discretion by denying Epperson's request for appointment of counsel because Epperson did not demonstrate exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

We do not consider the factual allegations stated for the first time in Epperson's appellate briefs. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("[F]acts not presented to the district court are not part of the record on appeal.").

Epperson's remaining contentions are unpersuasive.

AFFIRMED.